

## Minutes

The City Council of the City of Leawood, Kansas, met for a Work Session at 4800 Town Center Dr., Leawood, Kansas at 6:00 p.m. on Monday, June 21, 2022. Mayor Peggy Dunn presided.

**Councilmembers Present:** James Azeltine, Andrew Osman, Julie Cain, Jim Rawlings, Mary Larson, Debra Filla, Chuck Sipple, and Lisa Harrison

**Staff Present:** Patty Bennett, City Attorney  
David Ley, Public Works Director  
Mark Tepesch, Info. Services Specialist  
Stephen Powell, City Clerk  
Travis Torrez, Bldg/Code Enfremt Dir.

Chris Claxton, Parks, Rec & Arts Director  
Mark Klein, Planning Services Director  
Brian Anderson, Superintendent of Parks  
Stacie Stromberg, Assistant City Clerk

## **Discuss Proposed Tree Ordinance**

Mayor Dunn called the work session to order at 6:00 p.m.

Mayor Dunn acknowledged the extensive work involved in creating the proposed tree ordinance packet. She invited Brian Anderson, Superintendent of Parks to present the packet's contents. Mr. Anderson provided the backstory of the proposed tree ordinance. He further explained that the proposed ordinance would require protection plans for all Leawood street trees before construction or residential removal. He defined "street trees" as trees located in the City's right-of-way, which excludes trees in the front and backyards of private property.

Mr. Anderson and Mark Tepesch, Information Services Specialist, presented a video from the International Society of Arboriculture entitled "Best Practices – Setting Up a Tree Protection Zone" to provide a visual introduction to tree protections.

Mr. Anderson explained the proposed tree protection procedure:

- **Tree Protection Zones** – Mr. Anderson stated that the proposed tree ordinance would require a tree protection plan for every future construction and destruction on a residential street. He explained that the City would determine the area of the tree's protection zone and specify to the contractor the use of orange plastic fencing and signage stating the reason for fencing.
- **Collaborating with Contractors** – Mr. Anderson stated that the City would work with contractors whose projects would require activity within the Tree Protection Zone. He described compromises such as laying down a padded surface of wood mulch to avoid damage to the soil and properly pruning branches.
- **Dead / Aged Tree Removal** – Mr. Anderson stated that the proposed ordinance outlines the requirements for removing a dead, dying, or storm-damaged street tree. He explained that, under the proposed ordinance, contractors could not remove a street tree without a permit and the approval of the City. He clarified that a new tree would be replanted in the same place within 6 months of the original tree's removal.

Councilmember Andrew Osman asked if the 6-month replanting window could be extended when necessary. Mr. Anderson answered that it could. Patty Bennett, City Attorney, briefly mentioned that it could be extended if the type of tree needing to be replanted was temporarily unavailable.

Mayor Dunn asked how to keep the street tree protection zone fencing from blocking the sidewalk. Mr. Anderson responded that the fencing in these cases would not be closed circles but would instead line the perimeter of the sidewalk and arch out around the tree. He noted that all tree protection fencing would accommodate any sidewalks, residential lawns, and personal driveways that may fall within or near a street tree zone.

Councilmember Debra Filla read out the portion of the proposed ordinance that listed the penalties for ordinance violation and noted the requirement for a fine between \$500 and \$2,500. She drew attention to the clause stating that violators may be ordered to either correct the violation or make restitution at the discretion of the court. She then asked for some specific examples of restitution that could be included in the ordinance language.

Ms. Bennett responded that the form of restitution depended on the circumstances. She explained that in some cases, restitution may mean replacing the tree and paying a fine. She added that the burden of restitution would scale up for repeat offenses. Ms. Bennett stated that the “discretion of the court” clause could be replaced with a mandatory fine. She advised against this replacement, as some circumstances may require further discretion from a judge. She noted that the proposed ordinance was a living document and could be changed if the restitution requirements were insufficient.

Councilmember Filla stated that she had no issue with the “discretion of the court” clause. She added that fine requirements should include restoring the financial equivalent of any environmental harm caused. Ms. Bennett replied that would be the decision of staff and the court. Councilmember Filla reiterated that code violators be required to restore the ecological and monetary value of a street tree. Mr. Anderson responded that this could be an optional penalty in addition to the fines.

Councilmember Filla expressed appreciation for the work Mr. Anderson and other staff had done in creating the ordinance. She stated that in addition to the fine, she wanted restitution of the tree value to be a required consequence of code violation. Mr. Anderson responded that the tree protection provisions of Fairway and Prairie Village served as influences for Leawood’s proposed tree ordinance. Mr. Anderson explained that under Fairway’s ordinance, code violators must either replace all the caliper inches of the unlawfully removed trees or pay the value of the tree into a tree fund. He stated that Fairway used the tree fund to plant trees elsewhere on public property.

Councilmember Filla stated that restitution similar to the described tree fund should be added to the ordinance. She added that the clause allowing for “other restitution at the discretion of the court” should remain. Ms. Bennett briefly stated that restitution was already included in the penalties section. She read aloud the correlating sentence. Councilmember Filla replied that phrasing which mandates the replacement of unlawfully removed calipers should be added. She emphasized that replacement responsibility should be non-optional. Mayor Dunn briefly reminded the council that Section 13-402A was the passage under discussion.

Mr. Anderson explained that Prairie Village requires code violators to replace the caliper branches of up to three damaged trees. Councilmember Julie Cain asked if this meant three trees on the same subject

property. Mr. Anderson answered in the affirmative. Councilmember Lisa Harrison briefly pointed out that replanting trees on some properties may be challenging due to overplanting.

Ms. Bennett suggested a paragraph declaring that restitution may include paying the value of the calipers removed. Councilmember Filla stated that violations should be subject to both “a fine *and* restoration of calipers” as a standard requirement. Ms. Bennett responded that this stipulation should be worded as optional and left up to the court (using the language “*and/or*”). Councilmember Filla repeated that restoration should be required (using the language of only “*and*”). Councilmember Cain pointed out that the ordinance already accounted for optional restitution in addition to the fine with the language “*and may be.*” She asked Councilmember Filla if she was requesting to substitute “*may be*” with “*will*” or “*shall.*” Councilmember Filla echoed that she wanted to require a fine plus restoration. Mayor Dunn observed that further discretion is already included in the ordinance section. Councilmember Filla responded she did not want to rely on discretion. She emphasized that the ordinance needed to require both a fine and restoration of any unlawfully removed calipers. She added that the Legal and Parks Departments could determine the specific requirements for replacement. Ms. Bennett speculated that contractors may follow the general ordinance inspection protocol, but they might still unintentionally violate portions of the ordinance. Councilmember James Azeltine agreed with Ms. Bennett. He stated that Mr. Anderson and the court should be given discretion in such cases. Councilmember Azeltine asked Ms. Bennett how the Parks Department would be involved in a code violation ruling. Ms. Bennett stated that the City Prosecutor would consult Parks and Codes staff on a court argument. Councilmember Filla drew a distinction between minor violations and egregious ones. She expressed that inadvertent violations could receive more lenient penalties than egregious ones.

Councilmember Harrison asked how many healthy right-of-way trees had been cut down in the past 10 years. Mr. Anderson replied that the Parks Department did not have a street tree inventory but would like to create one. Councilmember Azeltine described the potentially unauthorized removal of street trees with ash borer damage in a Ward 4 neighborhood. He expressed the importance of flexibility and staff discretion in such situations. He agreed with Councilmember Filla that repeat offenders should receive substantial consequences. He stated that there should not be mandatory standard consequences for all cases. Councilmember Harrison added that neighborhoods in Ward 3 had also removed damaged trees in the right-of-way. She asked if Councilmember Filla’s proposed consequences would apply in this situation. Councilmember Filla responded that consequences would not apply in that situation. She clarified that her proposed restoration requirement would only apply when a healthy tree was unlawfully removed. Ms. Bennett suggested that the Council review the court’s application of the ordinance one year after its adoption in order to refine the restitution requirements.

Councilmember Osman asked for an approximate total number of trees that would be affected by the ordinance. Mr. Anderson estimated a sum of 27,000 street trees.

Councilmember Chuck Sipple asked who owned street trees located near resident property. Ms. Bennett explained that the City owns trees located in the right of way. She added that residents are required by law to maintain the trees and their immediate surroundings. Mr. Anderson acknowledged that the previous ordinance left the discretion of street tree protection and replacement to Homeowners Associations (HOAs). He explained that the proposed ordinance would grant the City authority over the removal and replanting of all right-of-way trees regardless of HOA guidelines. Councilmember Sipple remarked that he felt the high obligation for residents to sustain street trees was disproportionate to the residents’ lack of authority over removing the trees. Ms. Bennett clarified that residents could obtain

permission from the City to cut down dead, dying, or storm damaged trees, but would be required to replace the tree with a new one.

Councilmember Jim Rawlings announced that he had presented the ordinance draft to Mark Ciaramitaro, a retired arborist who consulted for the Councilmember's HOA. Councilmember Rawlings distributed physical copies of Mr. Ciaramitaro's suggestions to the meeting attendees. Mr. Anderson agreed with Mr. Ciaramitaro's suggestion to create a street tree inventory. Mr. Anderson asked David Ley, Public Works Director, about penalties for removing street trees due to emergency storm damage. Mr. Ley confirmed that residents would not be penalized for removing storm damaged right-of-way trees without a permit. Councilmember Rawlings drew attention to Mr. Ciaramitaro's concern about the lack of licensing requirements for tree trimmers. Councilmember Rawlings also noted residents' and HOAs' resentment toward continued responsibility for street tree maintenance. He advised that the Council slow down and address these concerns before voting. Ms. Bennett reminded the Council that the present work session was only for discussion. She stated that a vote would not occur until after further ordinance revision and a subsequent Council meeting.

Mayor Dunn agreed with Ms. Bennett's suggestion to review the ordinance's application one year after its adoption. Ms. Bennett added that staff from the Codes, Parks, and Public Works Departments could also track the ordinance's impact on their operations and report on it in a year.

Councilmember Rawlings expressed preference for his HOA to maintain authority over tree protection, trimming, and emergency removal without need for city permits. Councilmember Filla explained the necessity of the tree permit requirements by comparing them to the waste management licensing requirements.

Councilmember Azeltine echoed Councilmember Filla's concerns about egregious damage. He asked if there could be stricter consequences for licensed teardown/rebuild companies that violate the proposed ordinance. He also asked whether the Leawood Development Ordinance (LDO) would need to be updated to incorporate the proposed tree ordinances. Ms. Bennett stated it would not. Travis Torrez, Neighborhood and Code Enforcement Director, added that the proposed tree ordinance would only apply to residential teardown/rebuilds, not commercial ones. Councilmember Azeltine asked Mark Klein, Planning Services Director, if an LDO needed to be created in tandem with the street tree ordinance. Mr. Klein responded that he did not think an LDO was necessary. He added that the Planning Department was usually not involved in residential development. Councilmember Azeltine observed that right of way encompasses both residential and non-residential areas. He encouraged Mr. Torrez and Mr. Klein to investigate the overlap that may occur between the Neighborhood Codes and Planning Departments. Mr. Torrez responded that the Departments already collaborated in a detailed licensing process. Mr. Torrez explained that the process required contractors to review tree protection regulations before receiving a license. Councilmember Azeltine commented that if a contractor committed a violation after such a thorough process, they should receive harsher penalties.

Councilmember Sipple asked Mr. Torrez if the Codes department took photos of a site before licensed contractors began construction. Mr. Torrez responded that they did not.

Mr. Anderson stated that the Parks Department provides information on the trees near a proposed construction site before commercial contractors receive permits. He noted that this creates a record confirming the contractor's knowledge of aged, dead, and healthy trees, and makes the contractor accountable for subsequent damage and removal.

Councilmember Cain stated that she believed South Leawood and North Leawood should not be held to the same tree ordinance. She explained that South Leawood had higher amounts of street trees with ash borer damage. She added that many residents and HOAs were not educated on tree protections, maintenance, and grounds for removal.

Councilmember Osman asked what would happen if a resident moved a baby tree just outside of right-of-way border to avoid penalty before the tree ordinance passes. Mr. Anderson replied that the tree would be outside the bounds of the ordinance as it was no longer a street tree. He added that the City still has a say over dead or diseased trees on private residential property which could cause hazards to neighbors.

Councilmember Rawlings echoed his preference for the HOA to govern tree removal and replanting. Councilmember Filla stated that her HOA only used licensed arborists and that the contract her HOA uses works for tree maintenance. She anticipated that the proposed ordinance would be effective since similar regulations in her HOA had been followed by residents and improved street tree health. Councilmember Cain pointed out that residents may not know about the tree removal permit rule. Councilmember Filla responded that the ordinance requirements would eventually become common knowledge. Councilmember Azeltine thanked Councilmembers Filla and Rawlings for their opinions. He agreed with Councilmember Cain's sentiment that the proposed ordinance should not overwrite HOAs' existing tree protection processes in South Leawood.

Councilmember Sipple expressed support for the ordinance's requirement for approving construction sites. He echoed concerns about the difference in processes between North and South Leawood. Mr. Anderson explained that the ordinance's requirement for a review by the City could support the HOAs existing permit process. Councilmember Cain stated that the Parks Department would need an inventory in order for the review process to work. Councilmember Harrison remarked that an inventory would not be necessary. She stated that the Parks Department could examine street trees on a case-by-case basis. She stated that she would like Mr. Anderson to have discretion over tree replacement.

Mayor Dunn observed that the Council was in agreement on the tree protections requirements in the ordinance. She also noted that permit requirements for tree removal contractors appeared to already be in place. Mr. Anderson clarified that permits would also be required for any street tree maintenance or disturbance of the surrounding soil. She added that this permit requirement did not already exist. Councilmembers Rawlings and Cain questioned the need for involvement from the permit department. Mr. Torrez explained that, without oversight from permits, it would be too challenging to enforce the pre-construction tree protections portion of the ordinance.

Mayor Dunn asked Mr. Anderson to deliver all ordinance revisions and additions to the Council at a future date. Ms. Bennett added that revisions which account for the authority of South Leawood HOAs need to be added to the ordinance.

Meeting was adjourned at 7:09 p.m.